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MAR 15 2002

OFFICE OF PETITIONS

In re Application of :
Burt Swersey, Marcie J. Harvey, Elias :
Kaplan, Jennifer Lamana, Stephen J. :
Howard, Dean Meloney, John Weed, and :
Timothy Novak :
Application No. 09/800,872 :
Filed: March 7, 2001 :
Title: DIFFERENTIAL PERMEOMETER :

**DECISION REFUSING STATUS
UNDER 37 CFR §1.47(a)**

This is in response to the petition under 37 CFR §1.47(a)¹, filed September 10, 2001².

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on March 7, 2001. On April 18, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application -

¹ A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$130;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application;
- (3) a statement of the last known address of the non-signing inventors;
- (4) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review;
- (5) proof that the non-signing inventor refuses to sign the oath or declaration after having been presented with the application papers if the inventor refuses to sign, or proof that diligent efforts have been made to locate the non-signing inventor if he or she cannot be found, and;
- (6) a declaration which complies with 37 CFR 1.63.

² The petition contained a "first Class Certificate" dated September 5, 2001.

Filing Date Granted" (Notice), requiring an executed oath or declaration in compliance with §1.63 and the surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition (and fee). Accompanying the petition was a three-month extension of time, payment of the surcharge associated with the late filing of a declaration, a declaration executed by seven of the eight inventors, a statement by the petitioner which sets forth the pertinent facts, copies of two e-mails from signing inventor Burt Swersey to the non-signing inventor, and a declaration from the same.

The petitioner and the declarant set forth that the inventors were a group of students and a lecturer at Rensselaer Polytechnic Institute. After filing the application, the non-signing inventor left the University. The declarant then sent two e-mails to the last known e-mail address of the non-signing inventor, Kaplan@seciu.ny, which were returned from the Mail Delivery Subsystem MAILER-DAEMON@mail.taconic.net as not accepted for the reason "no such user or mailbox". The declarant then called the non-signing inventor at his last known telephone number, and wrote to him at his last known address (a residence in Albany, New York).

Rule 47 applicant has met requirements (1), (2), (3), and (4) above.

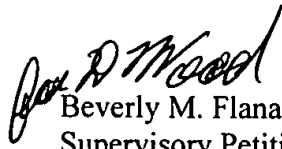
Regarding requirement (5) above, it is determined that the Rule 47 applicant has failed to prove that diligent efforts have been made to locate the non-signing inventor. A brief search of the LexisNexis database resulted in the name "Elias Kaplan" residing at the following address: 7218 Avenue M, Apartment 1, Brooklyn, New York, 11234-5808 with a telephone number of (718)-444-3963. A complete copy of the application, including the specification, claims, drawings (if any) and the declaration, should be sent to the non-signing inventor at this last known address.

Thus, on renewed petition, applicant must establish that diligent efforts have been undertaken to contact the non-signing inventor. Documentary evidence, including copies of the transmittal cover letters and return mail receipts, should be made part of the record.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By FAX:	(703) 308-6916 Attn: Office of Petitions
By hand:	Crystal Plaza Four, Suite 3C23 2201 S. Clark Place Arlington, VA

Telephone inquiries regarding this decision should be directed to Petitions Attorney Paul Shanowski at (703) 305-0011.

A handwritten signature in black ink, appearing to read "Beverly M. Flanagan".

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy